DR. AMBEDKAR: THE PRINCIPAL ARCHITECT OF THE CONSTITUTION OF INDIA

Clause wise Discussion on the Draft Constitution

SECTION FIVE
Clause-wise Discussion
16th May 1949 to 16th June 1949

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Discussion on the Articles:

PART I

Draft Constitution

ARTICLE 67-A

Mr. President: ...We shall now proceed to the consideration of the Draft Constitution. The House dealt with articles up to 67. We shall now proceed further. The Steering Committee was of the opinion that we might adopt the articles dealing with election matters first. That is, I think, the wish of this House also. But I understand that it will not be possible to proceed with those articles today and we can take them up from tomorrow. Today we begin with article 68 and such articles only dealing with election matters as fall within today's discussion, and those that come later will be taken up tomorrow.

There is one article of which notice has been given by way of amendment, *i.e.;*

67-A. It will be taken up first.

NEW ARTICLE 67-A

The Honourable Dr. B. R. Ambedkar (Bombay : General) : Mr. President, Sir, I move :

" That after article 67, the following new article he inserted :—

67-A. (1) The President may nominate persons not exceeding three in number to assist and advise the Houses of Parliament in connection with any particular Bill introduced or to be introduced in either House of Parliament.

(2) Every person so nominated in connection with any particular Bill shall, in relation to the said Bill, have the right to speak in, and otherwise to take part in the proceedings of either House and any joint sitting of the Houses of Parliament and any Committee of Parliament of which he may be named a member, but shall not, by virtue of such nomination, be entitled to vote nor shall he be entitled to speak in or otherwise to take part in the proceedings of either House or any joint sitting of the Houses or any Committee of Parliament in relation to any other matter.' "

Sir, the necessity for this article being inserted in the Constitution is this : The House will remember that the composition of the Upper Chamber was originally set out in paragraph 14 of the report of the Union Constitution Committee. In that paragraph it was stated that the Drafting Committee should adopt as its model the Irish system nominating fifteen members of the Upper Chamber out of a panel constituted by various interests such as science, literature, agriculture, engineering and so on. When the Drafting Committee took up this matter. Sir, B. N. Ro, who had in the meanwhile gone on tour, had a discussion with Mr. De Valera and the other members of the Irish Government as to how far this system which was in operation in Ireland had been a successful thing, and he was told that the panel system had completely failed with the result that the Drafting Committee decided to drop the provision suggested in paragraph 14 of the report of the Union Constitution Committee, and proposed a simple measure, viz.,, to endow the President with the authority to nominate fifteen persons to the Upper Chamber representing special knowledge or practical experience in science, literature and social services. After the Drafting Committee had prepared this draft, the matter was again reconsidered by the Union Constitution Committee and at this session of the Union Constitution Committee, the Committee proposed that the total number of nominations which was originally restricted to fifteen should be divided into two classes, *viz.,* that there should be a set of people nominated as full members of the House and they should have special knowledge and practical experience in art, science, literature and social services and that three other persons should be nominated as experts to assist and advise

Parliament in the matter of any particular measure that the Parliament may be considering at the moment.

The first part of the recommendation of the second session, if I may say so, of the Union Constitution Committee has already been incorporated in article 67 which has already been passed by the Assembly. It is to give effect to the second part of the recommendation of the Union Constitution Committee that this article is proposed to be introduced in the Constitution. Honourable Members will see that this article limits the functions of the members nominated thereunder. The functions are to assist and advise the Houses in a particular measure that may be before the House; in other words, the members who would be nominated under article 67-A, their term and their duration will be co-terminous with the proceedings with regard to a particular bill in relation to which they are nominated by the President to advise and assist the House.

From the second paragraph of article 67-A it will be noticed that they are only entitled to take part in the debate, whether the debate is taking place in the House as a whole or in a particular committee to which they are nominated by the House as members thereof; but they are not entitled to vote at all, so that the addition of these three members will certainly not affect the voting strength of the House. I am sure that the House will accept this new provision contained in article 67-A. If I may point out to the House, the provision contained in article 67-A of nominating experts to the House is not at all a new suggestion. Those members of the House who are familiar with the provisions of the Government of India Act of 1919 know when it introduced a popular element in the House, it also contained a provision which empowered the Governors of the different provinces to appoint experts to deal in a particular manner when the House is considering such a measure. I think it is a useful provision and it would do a lot of good if such a provision was introduced in the Constitution.

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Mr. President : The suggestion is that this thing was not circulated before and Members wish to have time.

The Honourable Dr. B. R. Ambedkar : I have no objection if the House wants that the consideration of this matter be postponed.

Mr. President: We shall postpone it today and we shall take it up later.

ARTICLE 68

Mr. President : The motion is :

" That article 68 form part of the Constitution. "

We shall now take up the amendments to this article.

(Amendments Nos. 1453 and 1454 were not moved.)

Amendment No. 1455 stands in the name of Mr. Naziruddin Ahmad. I think that is a verbal amendment. Will you like to move it ? With regard to these verbal amendments, I was going to make a suggestion to the Honourable Dr. Ambedkar. With regard to them, he might consider them in consultation with the Members who have given notice of such verbal amendments and such of them as would be accepted could be taken up at the time when the motion is placed before the House as having been accepted and we would save the time of the House in that way, but with regard to those which are not acceptable, of course, we shall have to consider what to do with them.

The Honourable Dr. B. R. Ambedkar :The Drafting Committee may be very glad to follow that procedure.

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The Honourable Dr. B. R. Ambedkar : Sir I move :

" That in the proviso to clause (2) of article 68, for the words ' by the President ' the words ' by Parliament by law ' be substituted. "

It is not necessary to offer any explanation for the amendment, which I have moved. It will be seen that the clause as it stands vests the power of extending the life of Parliament in the President. It is felt that this is so much of an invasion of the ordinary constitutional provisions that such a matter should really be vested in Parliament and that Parliament should be required to make such a provision for extending the life of itself by law and not by any other measure such as a resolution or motion.

Mr. President: Amendment No. 1465: that is covered by Dr. Ambedkar's amendment. It is not necessary to take it up.

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The Honourable Dr. B. R. Ambedkar: Mr. President, Sir, I do not think that anything has been said in the course of the debate on my amendment No. 1464, which calls for a reply. I think the amendment contains a very sound principle and I hope the House will accept it.

With regard to the amendment moved by my friend Prof. Shah, I think some of the difficulties, which arise from it, have already been pointed out by my friend Mr. T. T. Krishnamachari. Election, after all, is not a simple matter. It involves a

tremendous amount of cost, and I think it would be unfair to impose both upon the Government and upon the people this enormous cost of too frequent elections for short periods. I quite sympathise with the point of view expressed by Prof. Shah, that it has been the experience throughout that whenever an election takes place immediately after a war, people sometimes become so unbalanced that the election cannot be said to represent the true mind of the people. But at the same time. I think it must be realised that war is not the only cause or circumstance which leads to the unhinging, so to say, of the minds of the people from their normal moorings. There are many other circumstances, many incidents which are not actually wars, but which may cause similar unbalancing of the mind of the people. It is no use, therefore, providing for one contingency and leaving the other contingencies untouched, by the amendment, which Prof. Shah has moved. Therefore, it seems to me that on the whole it is much better to leave the situation as it is set out in the Draft Constitution.

Mr. President : Then I put the whole article as amended by Dr. Ambedkar's amendment.

The question is:

" That article 68, as amended, stand part of the Constitution. "

The Motion was adopted.

Article 68 as amended was added to the Constitution.

ARTICLE 68-A

Mr. President : Now I come to the new article sought to be put in article 68-A. Dr.Ambedkar.

The Honourable Dr. B.R. Ambedkar : Mr. President, Sir, I beg to move:

" That the following new article be inserted after article 68 :— ' 68-A. A person shall not be qualified to be chosen to fill a seat in Parliament unless he—

(a) is a citizen of India;

(b) is, in the case of a seat in the Council of States, not less than thirty-five years of age and, in the case of a seat in the House of the People, not less than twenty-five years of age, and

(c) possesses such other qualifications as may be prescribed in this behalf by or under any law made by Parliament.' "

Sir, the object of the article is to prescribe qualifications for a person who wants to be a candidate at an election. Generally, the rule is that a person who is a voter, merely by reason of the fact that he is a voter, becomes entitled to stand as a candidate for election. In this article, it is proposed that while being a voter is an essential qualification for being a candidate a voter who wishes to be a candidate must also satisfy some additional qualifications. These additional qualifications

are laid down in this new article 68-A.

I think the House will agree that it is desirable that a candidate who actually wishes to serve in the Legislature should have some higher qualifications than merely being a voter. The functions that he is required to discharge in the House require experience, certain amount of knowledge and practical experience in the affairs of the world, and I think if these additional qualifications are accepted, we shall be able to secure the proper sort of candidates who would be able to serve the House better than a mere ordinary voter might do.

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Shri T. T. Krishnamachari : ...Much has been made about this rather trifling point by saying that the amendment of Dr. Ambedkar is mischievous and iniquitous. I do hope that the House would realise that these remarks really exaggerate the position and have really no bearing on the problem. I support the amendment of Dr. Ambedkar as amended by Shrimati Durgabai's amendment.

The Honourable Dr. B. R. Ambedkar : **I** am prepared to accept the amendment of Shrimati Durgabai. I cannot accept any other amendment.

Mr. President : Do you wish to reply ?

The Honourable Dr. B. R. Ambedkar : I do not think it is necessary for me to reply except to say that if I accept the amendment of Shrimati Durgabai, it would in certain respects be inconsistent with article 152 and 55, because in the case of the provincial Upper House we have fixed the limit at thirty-five and also for the Vice-President we have the age limit at thirty-five. It seems to me that even if this distinction remains, it would not matter very much. Further still it is open to the House, if the House so wishes, to prescribe a uniform age limit.

Mr. President : I will now put the amendment to vote

[Following amendment of Smt. Durgahai was adopted.]

" That in the new article 68-A proposed for insertion after article 68, in clause

(b) for the word ' thirty-Five ' the word ' thirty ' be substituted. "

Article 68-A as amended was added to the Constitution.

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ARTICLE 69

The Honourable Dr. B. R. Ambedkar : Sir, I regret that I cannot accept any of the amendments, which have been moved to this article. I do not think that any of the amendments except the one, which I have chosen now for my reply, calls for any. comment. The amendments moved by Prof. Shah raise certain points. His

first amendment (No. 1470) and his second amendment (No. 1479) refer more or less to the same subject and consequently I propose to take them together to dispose of the arguments that he has urged. In those two amendments Prof. Shah insists that the interval between any two sessions of the Parliament shall not exceed three months. That is the sum and substance of, the two amendments.

I might also take along with these two amendments of Prof. Shah the amendment of Mr. Kamath (No. 1471) because it also raises the same question. It seems to me that neither Prof. Shah nor Mr. Kamath has understood the reasons why these clauses were originally introduced in the Government of India Act, 1935. I think Prof. Shah and Mr. Kamath will realise that the political atmosphere at the time of the passing of the Act of 1935 was totally different from the atmosphere, which prevails now. The atmosphere, which was then prevalent in 1935, was for the executive to shun the legislature. In fact before that time the legislature was summoned primarily for the purpose of collecting revenue. It only met for the purpose of the budget and after the executive had succeeded in obtaining the sanction of the legislature for its financial proposals, both relating to taxation as well as to appropriation of revenue, the executive was not very keen to meet the legislature in order to permit the legislature either to question the day-to-day administration by exercising its right of interpolation or of moving legislation to remove social grievances. In fact, I myself have been very keenly observing the conduct of some of the provincial legislatures in India which function under the Act of 1935, and I know of one particular province (I do not wish to mention the name) where the legislature never met for more than 18 days in the whole year and that was for the purpose of the legislature's sanction to the proposals for collecting revenue.

Mr. Tajarnul Husain: Who was responsible for that?

The Honourable Dr. B. R. Ambedkar: As I was going to explain the same, mentality which prevailed in the past of the executive not wishing to meet the legislature and submitting itself and its administration to the scrutiny of the legislature was responsible for this kind of conduct.

Pandit Hirday Nath Kunzru: Which province was it?

The Honourable Dr. B. R. Ambedkar: You better let that lie. I can tell my honourable Friend privately which province it was. It was felt that if such a thing happened as did happen before 1935, it would be a travesty of popular government. To summon the legislature merely for the purpose of getting the revenue and then to dismiss it summarily and thus deprive it of all the legitimate opportunities, which the law had given it to improve the administration either by questions or by legislation, was, as I said, a travesty of democracy. In order to prevent that sort of thing happening this clause was introduced in the

Government of India Act, 1935. We thought and personally I also think that the atmosphere has completely changed and I do not think any executive would hereafter be capable of showing this kind of callous conduct towards the legislature. Hence we thought it might be desirable as a measure of extra caution to continue the same clause in our present Constitution. My Friends Mr. Kamath and Prof. Shah feel that that is not sufficient. They want more frequent sessions. The clause as it stands does not prevent the legislature from being summoned more often than what has been provided for in the clause itself. In fact, my fear is, if I may say so, that the sessions of Parliament would be so frequent and so lengthy that the members of the legislature would probably themselves get tired of the sessions. The reason for this is that the Government is responsible to the people. It is not responsible merely for the purpose of carrying on a good administration: it is also responsible to the people for giving effect to such legislative measures as might be necessary for implementing their party programme.

Similarly there will be many private members who might also wish to pilot private legislation in order to give effect to either their fads or their petty fancies. Again, there may be a further reason, which may compel the executive to summon the legislative more often. I think the question of getting through in time the taxation measures, demands for grants and supplementary grants is another very powerful factor which is going to play a great part in deciding this issue as to how many times the legislature is to be summoned.

Therefore my submission to the House is that what we have provided is sufficient by way of a minimum. So far as the maximum is concerned the matter is left open and for the reasons, which I have mentioned there, is no fear of any sort of the executive remaining content with performing the minimum obligation imposed upon them by this particular clause.

I come to the amendment of Prof. Shah (No. 1477). By this particular amendment Prof. Shah wants to omit the words " either House " from clause 67 (2) (a). I could not understand his argument. He seemed to convey the impression—he will correct me if I am wrong—that because the Upper Chamber is not subject to dissolution it is not necessary for the President to summon it for the transaction of business. It seems to me that there is a complete difference between the two situations. A House may not be required to be dissolved at any stated period such as the Lower House is required to be dissolved at the end of five years; but the summoning of that House for transacting business is a matter that still remains. The House is not going to sit here in Delhi every day for 24 hours and all the twelve months of the year. It will be called and the members will appear when they are summoned. Therefore it seems to me that the power of summoning even the Upper House must be provided for as it is provided for in

the case of the Lower Chamber.

Then I take the two other amendments of Prof. Shah (Nos. 1473 and 1478). The amendments as they are worded are rather complicated. The gist of the amendments is this. Prof. Shah seems to think that the President may fail to summon the Parliament either in ordinary times in accordance with the article or that he may not even summon the legislature when there is an emergency. Therefore he says that the power to summon the Legislature where the President has failed to perform his duty must be vested either in the Speaker of the Lower House or in the Chairman or the Deputy Chairman *of* the Upper House. That is, if he have understood it correctly, the proposition of Prof. K. T. Shah. It seems to me that here again Prof. Shah has entirely misunderstood the whole position. First of all, I do not understand why the President should fail to perform an obligation, which has been imposed upon him by law. If the Prime Minister proposes to the President that the Legislature be summoned and the President, for no reason, purely out of wantonness or cussedness, refuses to summon it, I think we have already got a very good remedy in our own Constitution to displace such a President. We have the right to impeach him, because such a refusal on the part of the President to perform obligations, which have been imposed upon him, would be undoubtedly violation of the Constitution. There is therefore ample remedy contained in that particular clause.

But, another difficulty arises if we are to accept the suggestion of Professor K. T. Shah. Suppose for instance the President for good reason does not summon the Legislature and the Speaker and the Chairman do summon the Legislature. What is going to happen? If the President does not summon the Legislature it means that the Executive Government has no business, which it can place, before the House for transaction. Because, that is the only ground on which the President, on the advice of the Prime Minister, may not call the Assembly in session. Now, the Speaker cannot provide business for the Assembly, nor can the Chairman provide it. The business has to be provided by the Executive, that is to say, by the Prime Minister who is going to advise the President to summon the Legislature. Therefore, merely to give the power to the Speaker or the Chairman to summon the Legislature without making proper provisions for the placing of business to be transacted by such an Assembly called for in a session by the Speaker or the Chairman would to my mind be a futile operation and therefore no purpose will be served by accepting that amendment.

With regard to the last amendment No. 1482 moved by Prof. K. T. Shah, the purpose is that the President should not grant the dissolution of the House unless the Prime Minister has stated his reasons in writing for dissolution. Well, I do not know what difference there can be between a case where a Prime Minister goes and tells the President that he thinks that the house should be dissolved and a

case where the Prime Minister writes a letter stating that the house should be dissolved. Professor K. T. Shah, in the course of his speech, has not stated what purpose is going to be served by this written document, which he proposes to be obtained from the Prime Minister before dissolution is sanctioned. I am therefore unable to make any comment. If the object of Prof. K. T. Shah is that the Prime Minister should not arbitrarily ask for dissolution, I think that object would be served if the convention regarding dissolution was properly observed. So far as I have understood it, the King has a right to dissolve Parliament. He generally dissolves it on the advice of the Prime Minister, but at one time, certainly at the time when Macaulay wrote English History where he has propounded this doctrine of the right of dissolution of Parliament, the position was this: it was agreed by all politicians that, according to the convention then understood; the King was not necessarily bound to accept the advice of the Prime Minister who wanted a dissolution of Parliament. The King could, if he wanted, ask the leader of the Opposition, if he was prepared to come and form a Government so that the Prime Minister who wanted to dissolve the house may be dismissed and the leader of the Opposition could take charge of the affairs of Government and carry on the work with the same Parliament without being dissolved. The King also had the right to find some other Member from the house if he was prepared to take the responsibility of carrying on the administration without the dissolution of the House. If the 'King failed either to induce the leader of the Opposition or any other Member of Parliament to accept responsibility for governing and carry on the administration, he was bound to dissolve the House. In the same way, the President of the Indian Union will test the feelings of the House whether the House agrees that there should be dissolution or whether the House agrees that the affairs should be carried on with some other leader without dissolution. If he finds that the feeling was that there was no other alternative except dissolution, he would, as a constitutional President, undoubtedly accept the advice of the Prime Minister to dissolve the House. Therefore it seems to me that the insistence upon having a document in writing stating the reasons why the Prime Minister wanted dissolution of the House seems to be useless and not worth the paper on which it is written. There are other Ways for the President to test the feeling of the House and to find out whether the Prime Minister was asking for dissolution of the House for b*onafide* reasons or for purely party purposes. I think we could trust the President to make a correct decision between the party leaders and the house as a whole. Therefore I do not think that this amendment should be accepted.

Mr. President: I shall now put the amendments to vote one by one. *[All amendments were rejected. Article 69 was added to the Constitution.]*

ARTICLE 71

The Honourable Dr. B. R. Ambedkar: Prof. K. T. Shah simply wants, in the terms in which he has used, stated explicitly; what in my judgement is implicit in the phrase ' causes of its summons '. I think this phrase is wide enough to include everything that Prof. K. T. Shah wants and if I may say so, this phraseology, namely " shall address and inform Parliament of the causes of its summons " is a phrase, which we find, used in the British Parliament. lf Prof. Shah were to refer to Campion's book on the rules of the House of Commons, he will find that this phraseology is used there and after a long and great deal of search for a proper phraseology, we are fortunate enough in finding these words in Campion and I think it is a good phrase and ought to be retained since it covers all that Prof. K. T. Shah wants. Prof. K. T. Shah said that there ought to be a provision for the President also to send messages and to otherwise address the House. I thought that there was definite provision in article 70 which we just now passed, which enables the President to address both Houses of Parliament, also to send messages and the messages may be in relation to a particular Bill or may be any other proceedings before Parliament. I do not think that anything more is required than what is contained in article 70 so far as the independent right of the President addressing the House is concerned and that is amply provided for in article 70. I therefore think that there is no necessity for this amendment at all.

[The only amendment of Prof. K. T. Shah was negatived. Article 71 was added to the constitution.]

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ARTICLE 72

The Honourable Dr. B. R. Ambedkar: Sir, I do not think Professor Shah has really understood the underlying purpose of article 72. In order that the matter may be quite clear. I might begin by slating some simple fundamental propositions. Every House is an autonomous House that is to say, that he will not allow anybody who is not a member of that House either to participate in its proceedings or to vote at the conclusion of the proceedings. The only persons who are entitled to take part in the proceedings and to vote are the persons who are members of that House. Now, we have got an anomalous situation and it is this. We have got two Houses so far as the Centre is concerned, the Upper House and the Lower House. It is quite possible that a person who is appointed a Minister is a member of the Lower House. If he is in charge *of* a particular Bill, and the Bill by the constitution requires the sanction of both the Houses, obviously, the Bill has not only to be piloted in the Lower House, but it has also to be piloted in the Upper House. Consequently, if a person in charge of the Bill is a

member of the Lower House, he would not ordinarily be in a position to appear in the Upper House and to pilot the Bill unless some special provision was made. It is to enable a person who is a member of the Lower House and who happens to be the Minister in charge of a Bill, *to* enable him to enter the Upper House, to address it, to take part in its proceedings that article 72 is being enacted. Article 72 is really an exception to the general rule that no person can take part in the proceedings of a House unless that person is a Member of that House. It is essential that the Minister who happens to be a member of the Upper House must have the right to go to the Lower House and address it in order to get the measure through. Similarly if he is a member of the Lower House, he must have the liberty to appear in the Upper House, address it and get the measure through. It is for this sort of thing that article 72 is being enacted. The same applies to the Attorney General. The Attorney General may be a member of the Lower House. He may have to go to the Upper House but being a member of the Lower House he may not have the legal right to appear in the Upper House. Consequently the provision has been made. Similarly if he is a member of the Upper House he may not be having a legal right to enter the Lower House and address it. It is therefore for this purpose that this is enacted. We have limited this right to take part in the proceedings only. We do not thereby give the right to vote to any Minister who is taking part in the proceedings of the other House. Because we do not think that voting power is necessary to enable him to carry out the proceedings with regard to any particular Bill. I thought my friend also said that the word ' Minister ' ought to be omitted, and the word ' elected person ' ought to be introduced ; but that again would create difficulty because we have stated in some part of our Constitution that it should be open for a person who is not an elected member of the House to be appointed a Minister for a certain period. In order to enable even such a person it is necessary to introduce the word ' Minister ' and not ' person '. That is the reason why the word ' Minister ' is so essential in this context. I oppose the amendment.

[Amendment of Prof. K. T. Shah was negatived and Article 72 was added to the Constitution.]

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ARTICLE 73

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The Honourable Dr. B. R. Ambedkar (Bombay : General): Mr. President,. Sir, I cannot help saying that the amendment moved by Mr. Naziruddin Ahmad is a thoroughly absurd one and is based upon an utter misconception of what the

clause deals with. He does not seem to understand that there is a distinction between re-election of a person to the same office and a new election. What we are dealing with in article 73 is not re-election, but a new election. A new election is the result of a vacancy in the office by reason of the circumstances mentioned in article 74. By reason of article 74 the same person has ceased to be a member of the House and obviously, that person having ceased to be a member of the House, you cannot say that they may elect ' a member ' which may mean the same person who previously held office. Consequently in order to meet this contingency, the proper wording is ' another member ' because that member has become disqualified under article 74. Therefore the wording of article 73 is perfectly in order. I may state here that if a member ceases to be a member by efflux of time, he can be re-elected, because he is ' another member '.

[Amendment of Mr. Nasiruddin Ahmed was rejected. Article 73 was added to the Constitution.]

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NEW ARTICLE 75-A

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The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, no such difficulty as has been pointed out by Mr. Kamath is likely to arise, and there is, I submit, no lacuna whatsoever. The position will be this : If the Chairman is being tried, so to say—1 am using the popular phrase— then, although he is present, the Deputy Chairman shall preside. If the Deputy Chairman is being tried, the Chairman will preside; and when the Deputy Chairman is being tried, if the Chairman is not present to preside, then what the new clause says is that clause (2) of article 75 will apply. Clause (2) of article 75 says that " During the absence of the Chairman or the Deputy Chairman from any sitting of the Council of States, such person as may be determined by the rules of procedure of the Council, or if no such person is present, such other person as may be determined by the Council, shall act as Chairman." Therefore that difficulty is met by the application of clause (2) of article 75 to the case dealt with by this new article 75-A.

Mr. President : The question is :

(Motion by Mr. T. T. Krishnamachari)

" That after article 75, the following new article be inserted :— " 75-A. At any sitting of the Council of States, while any resolution for the removal of the Vice-President from his office is under consideration, the Chairman, or while any resolution for the removal of the Deputy Chairman from his office is under consideration, the Deputy Chairman, shall not, though he is present, preside, and the provisions of clause (2) of the last preceding article shall apply in relation to

every such sitting as they apply in relation to a sitting from which the Chairman or, as the case may be, the Deputy Chairman, is absent.' "

The motion was adopted.

Article 75-A was added to the Constitution.

ARTICLE 76

Mr. President : The motion is :

" That articles 76 stand part of the constitution."

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Mr. Naziruddin Ahmad: I do not wish to formally move this amendment, but I want to make a few remarks. A similar amendment of mine was very kindly characterised by Dr. Ambedkar as absurd. I submit. Sir, my amendment was not absurd....

The Honourable Dr. B. R. Ambedkar : We have already dealt with that amendment, and a similar amendment was moved by my Honourable Friend to article 73.

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ARTICLE 77

The Honourable Dr. B. R. Ambedkar: Sir, I am sorry I cannot accept the amendment moved by my honourable friend, Mr. Kamath. The existing article is based upon a very simple principle and it is this, that a person normally tenders his resignation to another person who has appointed him. *Now* the Speaker and the Deputy Speaker are persons who are appointed or chosen or elected by the House. Consequently these two people, if they want to resign, must tender their resignations to the House, which is the appointing authority. Of course, the House being a collective body of people a resignation could not be addressed to each member of the House separately. Consequently, the provision is made that the resignation should be addressed either to the Speaker or to the Deputy Speaker, because it is they who represent the House. Really speaking, in theory, the resignation is to the House because it is the House, which has appointed them. The President is not the person who has appointed them. Consequently, it would be very incongruous to require the Deputy Speaker or the speaker to tender their resignations to the President, who has nothing to do with House and who should have nothing to do with the House in order that the house may be

independent of the executive authority exercised either through the President or through the Government of the day.

Shri H. V. Kamath : On a point of information, may I know from Dr. Ambedkar what is the procedure prevailing in the case of the Speaker of the Central Legislative Assembly today ?

The Honourable Dr. B. R. Ambedkar : The position today is so different. Does he ask about the present position or the position that he wants to create ? Under the Government of India Act the Assembly and the Speaker are the creatures of the Governor-General. Consequently, the Speaker is required to address his resignation to the Governor-General. We do not want that situation to be perpetuated. We want to give the President as complete and as independent position of the executive as we possibly can.

Shri H. V. Kamath : Even under the Government of India Act, is not the Speaker elected by the Assembly ?

The Honourable Dr. B. R. Ambedkar : That is wrong. He is no doubt elected; but his election is required to be approved by the Governor General.

Shri H. V. **Kamath :** I beg leave to withdraw the amendment. Sir.

The amendment was, by the leave of the Assembly, withdrawn.

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NEW ARTICLE 79-A

Mr. President.: There is article 79-A given notice of by Dr. Ambedkar and Shri Ghanshyam Singh Gupta.

The Honourable Dr. B. R. Ambedkar : I would like this to stand over.

Mr. President : Article 79-A stands over.

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ARTICLE 80

Mr. President :I remember that; it is not necessary to repeat that. We take it that that amendment is not moved. We may go. to article 80.

The motion is:

" The article 80 form part of the Constitution."

The Honourable Dr. **B. R. Ambedkar :** Mr. President, Sir, I move :

"That in clause (1) of article '80, for the words 'Save as provided in this Constitution ' the words ' save as otherwise provided in this Constitution ' be substituted. "

Sir, this is just a slip and it has to be corrected.

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Shri T. T. Krishnamachari : May I point out that the House has already adopted 68-A which is exactly the same as the amendment now sought to be moved by Mr. Kamath ?

The Honourable Dr. B. R. Ambedkar : Yesterday we adopted 68-A which covers the same point.

Mr. President : He is dealing with 1538 and first part of 1541.

Shri T. T. Krishnamachari : I am sorry.

The Honourable Shri K. Santhanam : I suggest Mr. Kamath may move them separately. We may want to support one and oppose the other.

Shri H. V. Kamath: 1538 and 1541 go together; otherwise the picture will not be complete. If my amendments are accepted, the article would read thus—

" Save as otherwise provided in this constitution, all questions at any sitting of either House or joint sitting of the Houses shall be determined by a majority of votes of the members present and voting :

Provided that the Chairman or Speaker, etc. "

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The Honourable Dr. B. R. Ambedkar: Sir, I am sorry I cannot accept the amendment of Mr. Kamath.

Shri H. V. Kamath : Which of my amendments ? I moved three amendments, separately.

The Honourable Dr. B. R. Ambedkar : The one, which he moved just now. I find in the book, one consolidated amendment. He might have spoken on different parts of it. But the amendment as it stands is a single one.

Shri H. V. Kamath : Sir, I sent them separately, and I spoke on them separately. With your leave. Sir, I may point them out firstly, adding " of either House " after the words " at any sitting ". Secondly deletion of the words " other than the Chairman or Speaker or person acting as such ". Thirdly inserting the words " provided that " at the commencement of the second para. I would like to know which of these three the Honourable Member is accepting, whether he is rejecting all the three or two or one.

The Honourable Dr. B. R. Ambedkar: I am referring to the Honourable Member's amendment No. 1538, which so far as the official document is concerned, appears to be a single amendment.

Shri H. V. Kamath: Sir, I asked your leave, to move them separately.

Mr. President : Mr. Kamath has moved these three things. But they can be

separately taken also. As amended, the article would read like this:

" Save as otherwise provided in this Constitution, all questions at any sitting of either House or joint sitting of the Houses shall be..... "

The Honourable Dr. B. R. Ambedkar : I find I can accept No. 87 in the consolidated list of amendments. It serves my purpose, and therefore I accept it.

[Article 80 as amended was added to the Constitution.]

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ARTICLE 81

The Honourable Dr. B. R. Ambedkar : Sir, I move : " That in article 81 for the words ' a declaration ', the words ' an affirmation or oath ' be substituted."

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Shri H. V. Kamath : Mr. President, Sir, I have come here just to seek a little clarification from my honourable Friend, Dr. Ambedkar, in regard to his amendment No. 1554 which he has just now moved and which seeks to substitute for the words " a declaration ", the words " an affirmation or oath ". May I, Sir, invite your attention to the fact that the House has already adopted article 49, which provides for an affirmation or oath by the President or person acting as or discharging the functions of the President before entering office. The affirmation or oath provided therein was amended to the effect that the President or person acting as or discharging the functions of the President, should, before he enters upon his office take the oath or affirmation in the following form:—

"I, A, B, in the name of God, do swear ", or "I, A, B, do solemnly affirm".....

May I have an assurance from my honourable Friend Dr. Ambedkar as well as from the House that the affirmation or oath referred to in article 81 will be on the same lines as provided for in the amended article 49 of the Constitution ?

Mr. President : I take it that it is obvious that the Schedule will have to be amended so as to fit in with the wordings of this clause....

The Honourable Dr. B. R. Ambedkar : Sir, I am sorry to say that I cannot accept the amendment moved by my friend Professor Shah. I think Prof. Shah has really misunderstood the sequence of events, if I may say so, in the life *of* a candidate who has been elected until the time that he becomes a member of the House. If Prof. Shah were to refer to article 81 and also note the heading "Disqualifications of Members " the first thing he will realise is that merely because a candidate has been elected to Parliament, does not entitle him to become a member of Parliament. There are certain, what I may call, ceremonies that have to be gone through before a duly elected candidate can be said to have

become a Member of Parliament. One such thing, which he has to undergo, is the taking of the oath. He must first take the oath before he can take his seat in the House. Unless and until he takes the oath he is not a member and so long as he is not a member he is not entitled to take a seat in the House. That is the provision. Unless candidates take their oath and take their seats they do not become members and they do not become entitled to elect the Speaker. That is the sequence of events,— election, taking of the oath, becoming a member and then becoming entitled to the election of the Speaker. Therefore the election of the Speaker must be preceded by the taking of the oath.

Having regard to this sequence of events it would be impossible to say that the oath shall be taken before the Speaker, because the Speaker is not there and the Speaker cannot be elected until the elected candidates become members. Therefore the authority to administer the oath must necessarily be vested in some person other than the Speaker. That being the position the question is, in whom this power to administer the oath shall be vested. Obviously, it can be vested only in the President or in some other person to whom the President may transfer his authority in this behalf. In accordance with this sequence of events the only course to adopt is to vest the authority to administer the oath either in the President or in some other person appointed in that behalf by him. It cannot be done by vesting the authority in the Speaker, because the Speaker does not exist at all then.

Now I come to the point raised by our President. What happens to a newly elected member in a bye-election with regard to the taking of the oath ? Has lie to go to the President or can he take the oath before the Speaker ? The answer to that question is that the President will, after the Speaker has been elected, confer upon him by order the authority to administer the oath on his behalf, so that when a newly elected candidate appears in Parliament for the purpose of taking the oath, it will be administered to him by the Speaker as the person authorised by the President. Consequently, in the case of a newly elected person, it would not be necessary for him to go before the President or some other presiding authority appointed by the President.

That is the sequence of events and it would be seen that article 81 is so framed as to fit in with this sequence. Even today, if I may say so, the same procedure is followed. The President (or the Governor-General) appoints somebody when the House meets for the first time to preside over it. Every member then takes the oath or makes the affirmation before the presiding authority. After the oath is taken the presiding authority proceeds to conduct the election of the Speaker and when the election of the Speaker is completed, the person chosen as the presiding officer retires and the Speaker continues to occupy the place of the presiding officer with the authority of the President to administer the oath to any

member who comes thereafter. Therefore, as I said, the original Draft is in keeping with the sequence of events and the provision, which is usually made for the President to confer his authority on the Speaker, will prevent the newly elected person from having to go to the President to take the oath.

Mr. President : Should it be necessary for the speaker to derive his authority to administer the oath from the President ?

The Honourable Dr. B. R. Ambedkar : I submit constitutionally, it is, because the administration of the oath is an incident in the constitution of the House, over which the Speaker has no authority.....

Mr. President : I am not thinking of that stage. I am thinking of a subsequent stage after the Speaker has been elected.

The Honourable Dr. B. R. Ambedkar: I think there is nothing wrong or derogatory, for the simple reason that the constitution of the House, its making up, the legal form of the House is a matter which is outside the purview of the Speaker. The Speaker is in charge of the affairs of the Parliament when the Parliament is constituted and the Parliament is not constituted unless the members take the oath. Therefore the taking up of the oath is really a part and parcel of constituting the House in accordance with the provision and so far as that is concerned I think that authority does not belong to the Speaker and need not belong to the Speaker.

Mr. President : Supposing at a subsequent meeting of the House the Speaker happens to be absent and a new member comes on a day when the Deputy Speaker or some other person is in the Chair.

The Honourable Dr. B. R. Ambedkar : The authority given to the Speaker becomes vested not only in the Speaker but also in the Deputy Speaker, in the Panel of Chairmen or any other person occupying the Chair for the time being.

Mr. President : The Speaker will have to depend upon the delegation of authority.

The Honourable Dr. B. R. Ambedkar : We have to depend upon the goodwill of all the functionaries created by the Constitution.

[Amendment of Dr. Ambedkar as shown above was adopted. Article 81 was added to the Constitution.]

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ARTICLE 82

The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, I beg to move :

"That after clause (1) of article 82, the following new clause be inserted :—

' 1. (a) No person shall *be* a member both of Parliament and of the Legislature of a State for the

time being specified in Part I or Part III of the First Schedule, and if a person is chosen a member both of Parliament and of the Legislature of such a State, then at the expiration of such period as may be specified in rules made by the President that person's seat in Parliament shall become vacant unless he has previously resigned his seat in the Legislature of the State .'

Sir, it requires no comment. It is the ordinary rule.

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The Honourable Dr. B. R. Ambedkar : I do not accept any of the amendments of Mr. Naziruddin Ahmad or of Mr. Kamath either. Mr. **President :** I shall now put the amendments to vote one after another.

[Amendment of Dr. Ambedkar alone as given above was accepted. Article 82, as amended, was added to the Constitution.]

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ARTICLE 83

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The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, I move :

" That for sub-clause (d) of clause (1) of article 83, the following be substituted :

' (d) If he has ceased to be a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence to a foreign State and. ' "

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Mr. President : There is one point, which I would like the Drafting Committee to consider in this case. If we refer to clause (2) of this article, there is no mention of Chairman or Vice-Chairman, Speaker or Deputy Speaker of the House of People. They also hold positions of profit. They are also paid officers.

The Honourable Dr. B. R. Ambedkar : Not under the Government. So they do not come under this.

Mr. President : That is all right.

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Mr. President: Does anyone else want to speak ? Has Dr. Ambedkar to say

anything ?

The Honourable Dr. B. R. Ambedkar: I do not accept any of the amendments, except amendment No. 1587, standing in the name of the Honourable Shri G. S. Gupta.

(Amendment of Dr. Ambedkar was adopted)

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Mr. President: Then there is the amendment of Mr. Kamath, No. 1585. But that does not arise now after accepting Dr. Ambedkar's amendment.

There is then Mr. Gupta's amendment No. 1587, that the word " and " should be deleted. Or has it to be substituted by " or " ?

The Honourable Dr. B. R. Ambedkar : It is the same tiling; either deleted " and " or substitute ' or ' for ' and '.

Mr. President : The question is :

"That the word ' and ' occurring at the end of sub-clause (d) of clause (1) of article 83 be deleted."

The amendment was adopted.

Article 83, as amended, was added to the Constitution.

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ARTICLE 85

Mr. President: We have had a very interesting discussion on something, which is not the subject matter of any amendment. There is no amendment moved to alter or modify the particular clause on which Pandit Maitra has spoken. There is no amendment on that point at all. . Now, I will take votes. Does Dr. Ambedkar wish to say anything ?

The Honourable Dr. B. R. Ambedkar : No, unless Mr. Kamath wants me to say something in reply to him. Mr. Alladi and others have already given the reply, and I will also be saying mostly the same thing, probably in a different way.

Mr. President : Then No. 1627, Shri .Taspat Roy Kapoor's amendment. I understand Dr. Ambedkar is willing to accept it.

The question is:

" That in clause (4) of article 85, after the words ' a House of Parliament ' the words ' or any committee thereof ' be inserted."

The amendment was adopted.

[Article 85 was added to the constitution.]

ARTICLE 86

The Honourable Dr. B. R. Ambedkar : (Bombay : General) : Sir, I am sorry I cannot accept the amendment of my Friend Mr. Lari. I think it unnecessary to give an elaborate reply to the arguments advanced by the mover, in view of my complete agreement with what has been said on the other side by Mr. Ananthasayanam Ayyangar and Mr. T. T. Krishnamachari. I do not think it would be desirable to waste the time of the House in adding anything to what they have said.' Their reply I find is quite complete.

I, however, accept the amendment of Mr. Santhanam for the substitution of the words ' Constituent Assembly ', for the words ' Legislature of the Dominion of India '.

[Except the amendment of Mr. Santhanam, other amendments were rejected. Article 86, as amended wax added to the Constitution]

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ARTICLE 88

The Honourable Dr. B. R. Ambedkar: Sir, I move:

" That in clause (2) of article 88, for the words ' both Houses are ' the words ' the House referred to in sub-clause (c) of that clause is ' be substituted."

Sir, it is just a matter of clarification by referring to the House referred to in sub-clause (c).

Mr. President : Amendment No. 1651. I think that is covered.

(Amendment No. 1652 was not moved.)

The Honourable Dr. B. R. Ambedkar: Sir, I move:

" That in clause (2) of article 88, before the last word ' days ' the word ' consecutive ' be inserted. "

(Amendment No. 1654 was not moved.)

The Honourable Shri K. Santhanam: Sir, I move :

" That in clause (4) of article 88, the words ' total number of ' be deleted. "

Sir, I do not want to press the deletion of the proviso. I want to amend the amendment to that extent....

The Honourable Dr. B. R. Ambedkar: I shall be grateful if my Honourable Friend would leave this matter to the Drafting Committee to consider and then we can bring it up afterwards ?

The Honourable Shri K. Santhanam: I agree. Sir.

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ARTICLE 88

The Honourable Dr. B. R. Ambedkar: Sir, there is only one amendment moved by my Friend Mr. Kamath which calls for some reply. His amendment is No. 1656 by which he seeks the omission of the words " for the purposes of this Constitution ". My submission is that those words are very essential and must be retained. The reason why I say this will be found in the provisions contained in clause (2) of article 87 and article 91. According to clause (2) of article 87, the main provision therein is that the Bill shall be passed independently by each House by its own members in separate sittings. After that has taken place, the Constitution requires under article 91 that the Bill shall be presented to the President for his assent. My Friend Mr. Kamath will realise that the provisions contained in article 88 are a deviation from the main provisions contained in clause (2) of article 87. Therefore it is necessary to state that the Bill passed in a joint sitting shall be presented to the President notwithstanding the fact that there is a deviation from the main provisions contained in clause (2) of article 87. That is why I submit that the words " for the purposes of this Constitution " are in my judgement necessary and are in no sense redundant.

With regard to the observations that have been made by several speakers regarding the provisions contained in article 88, all I can say is, there is some amount of justification for the fear they have expressed, but as other Members have pointed out, this is not in any sense a novel provision. It is contained in various other constitutions also and therefore my suggestion to them is to allow this article to stand as it is and see what happens in course of time. If their fears come true I have no doubt that some Honourable Member will come forward hereafter to have the article amended through the procedure we have prescribed for the amendment of the Constitution.

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The Honourable Dr. B. R. Ambedkar : Sir, while going over this article, I find that it requires further to be considered. I would therefore request you not to put this article to vote today.

Mr. President : There are four amendments moved to this article, and the first amendment is No. 1669 that in clause (1) of article 90, the word ' only ' be deleted. Mr. Naziruddin Ahmad wishes to emphasise the importance of that amendment. That may be taken into consideration by the Drafting Committee. The whole article is going to be reconsidered.

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ARTICLE 91

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The Honourable Dr. B. R. Ambedkar : Sir, I move :

" That in the proviso to article 91, for the words ' not later than six weeks ' the words ' as soon as possible ' be substituted."

Mr. Nasiruddin Ahmad : I have an amendment *to* this amendment, No. 94.

Mr. President : I think that is of a drafting nature.

Mr. Naziruddin Ahmad: There would be a difference in actual practice.

Mr. President : So, you consider it to be substantial ?

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Shri T. T. Krishnamachari : There is slight difference in language. I think Dr. Ambedkar's proposal will be the better one.

Mr. President: I shall put this to the vote. It need not be moved. Amendment No. 1689 : this is also the same as amendment No. 1688 of Dr. Ambedkar. We have taken it as having been moved. Is it necessary to move this ? You can move it if there is some slight difference.

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Mr. President : I would now put the amendments *to* vote. Do you want to say anything, Dr. Ambedkar ?

The Honourable Dr. B. R. Ambedkar : No. Sir, I do not think any reply is necessary.

Naziruddin Ahmad's amendment was negatived.

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Mr. President : I would now put the amendments to vote. Do you want to say anything, Dr. Ambedkar ?

[Dr. Ambedkar's amendments were accepted. Others were rejected. Article 91, as amended, was added to the Constitution.]

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ARTICLE 67-A

Mr. President : We will take up article 67-A, which was taken up the other day and was postponed.

The Honourable Dr. B. R. Ambedkar : (Bombay : General) : Sir, I move for permission of the House to withdraw this article.

Mr. President : I think he did not move it and so there is *no* question of withdrawing it.

Mr. B. Pecker Sahib : (Madras : Muslim) : No, it was taken up and the House is in possession of it. The Honourable Member should therefore give his reasons for withdrawing it.

Mr. President : Yes, I am sorry I made a mistake. The Honourable **Dr.** Ambedkar may give his reasons for withdrawing the article.

The Honourable Dr. B. R. Ambedkar : Sir, my reason is this. As I explained on the last occasion, we have made a provision for nominating certain persons to Parliament. The original proposal was to nominate fifteen persons; subsequently it was decided that these fifteen persons should be divided into two categories, viz., twelve representing literature, science, arts, social services, and so on; and a further provision should be made for the nomination of three persons to assist and advise the Houses of Parliament in connection with any particular Bill, I feel Sir, that the provision which is already contained in article 67 which permits the President to have twelve persons nominated to Parliament would serve the purpose which underlines this new article 67-A. The services that would be rendered by the persons nominated, if article 67-A were passed into law, would be also rendered by the persons who would be nominated under article 67; and therefore the nominations under article 67-A would be merely a duplication of the nominative system covered in article 67. Besides, it is felt that in an independent Parliament, which is fully sovereign and representative of the people there, should not be too much of an element of nomination. We have already twelve; there may be some nominations also regarding the Anglo-Indians and it is felt that to add to that nominated quantum would be derogatory to the popular and representative character of Parliament. That is why I .wish to withdraw this article 67-A.

Article 67-A was, by leave of the Assembly withdrawn

STATEMENT *re:* ARTICLE 92 TO 99

The Honourable Dr. B. R. Ambedkar : Sir, I propose that we start now with article 100.

Mr. President : I take it that the discussion on articles 92 to 99 should be held over for the time being to enable the business relating to finance and finance bills to be considered further.

The Honourable Dr. B. R. Ambedkar : Yes. The position is this. When article 90 was under debate I suggested that the debate should not be concluded and that the article should not be put to the vote because I discovered, at the last moment, a flaw in the article, which I thought it was necessary to rectify. Now if that flaw is to be rectified, then articles 96 to 99 also require to be reconsidered in the light of that article. Article 91 we have passed. Articles 92 to 99 require further consideration and therefore I want those articles to be held over for the lime being. But we can begin with article 100.

(Article 100 was adopted and added to the Constitution as suggested by Dr. Ambedkar]

ARTICLE 101

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The Honourable Dr. B. R. Ambedkar: Sir, with regard to the amendment of Mr. Kamath, I do not think it is necessary, because where can the proceedings of Parliament be questioned in a legal manner except in a court ? Therefore the only place where the proceedings of Parliament can be questioned in a legal manner and legal sanction obtained is the court. Therefore it is unnecessary to mention the words, which Mr. Kamath wants in his amendment.

For the reason I have explained, the only forum where the proceedings can be questioned in a legal manner and legal relief obtained either against the President or the Speaker or any officer or Member, being the Court, it is unnecessary to specify the forum. Mr. Kamath will see that the marginal note makes it clear.

With regard to the amendment moved by my Friend Mr. Naziruddin Ahmad, he has not understood that the important words in sub-clause (2) are ' in whom powers are vested '.

Mr. Nasiruddin Ahmad: For maintaining order.

The Honourable Dr. B. R. Ambedkar: ' No officer or other Member of Parliament in whom powers are vested ' are the persons who are protected by sub-clause (2). The Speaker is already an officer and also a Member. No powers have to be conferred upon him. The Constitution confers the power on him. Therefore, having regard to the fact that it is only ' other Member that is to say. Member besides the Speaker or the Deputy Speaker as the case may be, who requires to be protected. Therefore the word ' other ' is important.

Mr. President : What is the effect of the words ' or for maintaining order ' ?

The Honourable Dr. B. R. Ambedkar : Supposing there is a brawl in the House I do not like to put it that way. But, supposing there is a brawl in the House, and the Speaker, not finding any officer at hand to remove a certain Member, asks certain other Member who is present to remove the Member who is causing the brawl. Then that particular Member is the Member who is invested with this authority by the Speaker and he would come under " other Member ".

Mr. President : ' Or any other officer who is not a Member of the House ' does he come under that ?

The Honourable Dr. B. R. Ambedkar : ' Officer ' would he there.

Shri H. V. Kamath: May I ask for some clarification ? Mr. Santhanam, referring to my amendment said that the validity of any amendment can he called in question not merely in a court of law, hut also in a legislature. Does Dr.

Ambedkar agree with him ?

The Honourable Dr. B. R. Ambedkar: I am responsible for the explanation I have given.

Shri H. V. Kamath : As regards the other point mentioned by Dr. Ambedkar that the marginal sub-head is clear, may I point out that in the other forum, viz., the Legislative Assembly, I was told that the marginal headings have nothing to do with legislation as such and that articles or sections are taken without reference to the marginal headings. If this so, if you do not read the marginal heading and the article together, the meaning to my mind is not clear.

The Honourable Dr. B. R. Ambedkar : On that point there are two views. One is that the marginal note is not part of the section and the other view is that the marginal note is : for instance, Mr. Mavalankar, when he was in Bombay, held the view that the marginal note was not part of the section, but the present Speaker of the Bombay Assembly recently said that the marginal note was very much part of the section as it gives the key to the meaning of the section.

[Two amendments were negatived. Article 101 wax added to the Constitution.]

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ARTICLE 102

The Honourable Dr. B. R. Ambedkar: Mr. President, Sir, my friend, Pandit Kunzru, has raised some fundamental objections to the provisions contained in this article 102. He said in the course of his speech that we were really reproducing the provisions contained in the Government of India Act, 1935, which were condemned by all parties in this country. It seems to me that my friend. Pandit Kunzru, has not borne in mind that there are in the Government of India Act, 1935, two different provisions. One set of provisions is contained in section 42 of the Government of India Act and the other is contained in section

43. The provisions contained in section 43 conferred upon the Governor-General the power to promulgate ordinances which he felt necessary to discharge the functions that were imposed upon him by the Constitution and which he was required to discharge in his discretion and individual judgement. In the ordinances, which the Governor-General had the power to promulgate under section 43, the legislature was completely excluded. He could do anything— whatever he liked— which he thought was necessary for the discharge of his special functions. The other point is this; that the ordinances promulgated by the Governor-General under section 43 could be promulgated by him even when the legislature was in session. He was a parallel legislative authority under the provisions of section 43. It would be seen that the present article 102 does not contain any of the provisions, which were contained in section 43 of the

Government of India Act. The President, therefore, does not possess any independent power of legislation such as the powers possessed by the Governor-General under Section 43. He is not entitled under this article to promulgate ordinances when the legislature is in session. All that we are doing is to continue the powers given under Section 42 to the Governor-General to the President under the provisions of article 102. They relate to such period when the legislature is in recess, not in session. It is only then that the provisions contained in article 102 could he invoked. The provisions contained in article 102 do not confer upon him any power, which the Central Legislature itself does not possess, because he has no special responsibility, he has no discretion and he has no individual judgement. Consequently, my submission is that the argument which was profounded by my friend. Pandit Kunzru, went a great deal beyond the provisions of article 102. If I may say so, this article is somewhat analogous—1 am using very cautious language—to the provisions contained in the British Emergency Powers Act, 1920. Under that Act also, the King is entitled to issue a proclamation, and when a proclamation was issued, the executive was entitled to issue regulations to deal with any matter, and this was permitted to be done when Parliament was not in session. My submission to the House is that it is not difficult to imagine cases where the powers conferred by the ordinary law existing at any particular moment may be deficient to deal with a situation, which may suddenly and immediately arise. What is the executive to do ? The executive has got a new situation arisen, which it must deal with *ex hypothesis* it has not got the power to deal with that in the existing code of law. The emergency must be dealt with. and it seems to me that the only solution is to confer upon the President the power to promulgate a law, which will enable the executive to deal with that particular situation because it cannot resort to the ordinary process of law because, again *ex hypothesis,* the legislature is not in session. Therefore, it seems to me that fundamentally there is no objection to the provisions contained in article 102.

The point was made by my friend, Mr. Pocker, in his amendment No. 1796, whereby he urged that such an ordinance should not deprive any citizen of his fundamental right of personal liberty except on conviction after trial by a competent court of law. Now, so far as his amendment is concerned,. I think he has not read clause (3) of article 102. Clause (3) of article 102 lays down that any law made by the President under the provisions of article 102 shall be subject to the same limitations as a law made by the legislature by the ordinary process. Now, any law made in the ordinary process by the legislature is made subject to the provisions contained in the Fundamental Rights articles of this Draft Constitution. That being so, any law made under the provisions of article 102 would also be automatically subject to the provisions relating to fundamental

rights of citizens, and any such law therefore will not be able to over-ride those provisions and there is no need for any provision as was suggested by my friend, Mr. Pocker, in his amendment No. 1796.

The amendment suggested by my friend, Mr..Kamath, *i.e.,* 1793, seems to me rather purposeless. Suppose one House is in session and the other is not. If a situation as I have suggested arises, then the provisions of article 102 are necessary because according to this Constitution, no law can be passed by a single House. Both Houses must participate in the legislation. Therefore the presence of one House really does not satisfy the situation at all.

Shri H. V. Kamath : Does it mean that when one House only is in session, say, the House of the People, the President will still have this power ?

The Honourable Dr. B. R. Ambedkar: Yes, the power can be exercised because the framework for passing law in the ordinary process does not exist.

Shri H. V. Kamath: Shameful, I should say.

The Honourable Dr. B. R. Ambedkar : Now, I come to the other question raised by my friend, Mr. Kunzru, in his amendment No. 1802. His suggestion is that such legislation enacted by the President under article 102 should automatically come to an end at the end of thirty days from the promulgation of the ordinance. The provision contained in the draft article is that it shall continue for six weeks after the meeting of Parliament. Now. the reason why my friend. Pandit Kunzru, has brought in his amendment is this; he says that under the provisions contained in the draft article, a much longer period might elapse than six weeks, because he thinks that the executive may take, say, a month or two for summoning Parliament. If Parliament is summoned, say in four months, then the six weeks also might be there—that would be practicable—or it might be longer if the Executive delays the summoning of the Parliament. Well, I do not know what exactly may happen, but my point is this that the fear which my Honourable friend Pandit Kunzru has is really unfounded, because we have provided in another article 69, which says that six months shall not elapse between two sessions of the Parliament, and I believe, that owing to the exigencies of parliamentary business, there will be more frequent sessions of the Parliament than Honourable Members at present are inclined to believe. Therefore, I say, having regard to article 69, having regard to the exigencies of business, having regard to the necessity of the government of the day to maintain the confidence of Parliament, I do not think that any such dilatory process will be permitted by the Executive of the day as to permit an ordinance promulgated under article 102 remain in operation for a period unduly long, and I, therefore, think that the provisions as they exist in the draft article might be permitted to remain.

Shri H. V. Kamath : Mr. President, Sir, May I ask one last question ? Is it not

repugnant to our ideas or conceptions of freedom and democracy, which are, I presume. Dr. Ambedkar's also, not to lay down the maximum life of an ordinance in this article ?

The Honourable Dr. B. R. Ambedkar : My own feeling is this that a concrete reason for the sentiment of hostility, which has been expressed by my honourable friend, Mr. Kamath as well as my honourable friend Mr. Kunzru, really arises by the unfortunate heading of chapter "Legislative powers of the President". It ought to be "Power to legislate when Parliament is not in session ". I think if that sort of innocuous heading was given to the chapter, much of the resentment to this provision will die down. Yes. The word ' Ordinance ' is a bad word, but if Mr. Kamath with his fertile imagination can suggest a better word, I will be the first person to accept it. I do not like the word " ordinance ", but I cannot find any other word to substitute it.

Mr. President : There is another amendment, which has been moved by Sardar Hukam Singh in which he says that the President may promulgate ordinances after consultation with his Council of Ministers.

The Honourable Dr. B. R. Ambedkar : I am very grateful to you for reminding me about this. The point is that that amendment is unnecessary, because the President could not act, will not act except on the advice of the Ministers.

Mr. President: Where is the provision in the draft Constitution that binds the President to act in accordance with the advice of the Ministers ?

The Honourable Dr. B. R. Ambedkar: I am sure that there is a provision, and the provision is that there shall be a Council of Ministers to aid and advise the President in the exercise of his functions.

Mr. President : Since we are having this written Constitution, we must have that clearly put somewhere.

The Honourable Dr. B. R. Ambedkar : Though I cannot point it out just now, I am sure there is a provision. I think there is provision that the President will be bound to accept the advice of the Ministers. In fact, he cannot act without the advice of his Ministers.

Some Honourable Members : Article 61(1).

Mr. President : It only lays down the duty of the Ministers, but it does not lay down the duty of the President to act in accordance with the advice given by the Ministers. It does not lay down that the President is bound to accept the advice. Is there any other provision in the Constitution ? We would not be able even to impeach him, because he will not be acting in violation of the Constitution if there is no provision.

The Honourable Dr. B. R. Ambedkar : May I draw your attention to article 61, which deals with the exercise of the President's functions. He cannot exercise any of his functions, unless he has got the advice, ' in the exercise of his

functions '. It is not merely to ' aid and advise '. " In the exercise of his functions " those are the most important words.

Mr. President: I have my doubts if this word could bind the President. It only lays down that there shall he a council of ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions. It does not say that the President will he bound to accept that advice.

The Honourable Dr. B. R. Ambedkar : If he does not accept the advice of the existing ministry, he shall have to find some other body of ministers to advise him. He will never be able to act independently of ministers.

Mr. President : Is there any real difficulty in providing somewhere that the President will be bound by the advice of the ministers ?

The Honourable Dr. B. R. Ambedkar : We are doing that. If I may say so, there is a provision in the Instrument of Instructions.

Mr. President : I have considered that also.

The Honourable Dr. B. R. Ambedkar : Paragraph 3 reads : In all matters within the scope of the executive power of the Union, the President shall, in the exercise of the powers conferred upon him, be guided by the advice of his ministers. We propose to make some amendment to that.

Mr. President : You want to change that. As it is, it lays down that the President will be guided by the ministers in the exercise of executive powers of the Union and not in its legislative power.

The Honourable Dr. B. R. Ambedkar : Article 61 follows almost literally various other constitutions and the Presidents have always understood that that language means that they must accept the advice. If there is any difficulty, it will certainly be remedied by suitable amendment.

Shri H. V. Kamath : You will be leaving this article silent on the subject of the maximum life of an ordinance, which can extend to seven and a half months. It is impossible.

Mr. President : Is Mr. Kamath going to make a second speech on his amendment.

The Honourable Dr. B. R. Ambedkar: Our President is quite different from the President of the United States.

[All 6 amendments were rejected. Article 102 was added to the Constitution.]

The Honourable Dr. B. R. Ambedkar : Sir, I move :

" That in the heading to Chapter IV of Part V. for the words ' Federal Judicature ' the words ' Union Judiciary ' be substituted."

This is merely consequential to the earlier article where India has been described as a Union.

The amendment was adopted.

ARTICLE 102-A

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Mr. President : **It** is eight O'clock now. I think we had better close the discussion.

Shri Brajeshwar Prasad : (Bihar: General) : May I have one minute of the lime of' the House to speak on this motion.

Mr. President : **I** think the House is not willing to hear further speeches now.

The Honourable Dr. B. R. Ambedkar: Sir, I do not think any reply is necessary. If I may say so, it was rather unfortunate that Professor Shah should have moved this amendment. This matter was discussed in great detail when we were discussing the directive principles of Stale Policy. I do not therefore see why this matter was raised again and why there was a debate. The matter had been partially concluded in article 39-A.

Mr. President: I will now put the amendment to vote.

[The amendment was negatived.]

ARTICLE 103

The Honourable Dr. B. R. Ambedkar : (Bombay : General) : Mr. President, Sir, I move:

"That in clause (1) of article 103, for the words ' and such number of other judges not being less than seven, as Parliament may by law prescribe ' the words ' and until parliament by law prescribes a larger number, of seven other judges ' be substituted. "

The object of this amendment is that the constitution of the Supreme Court should not be held over until Parliament by law prescribes the number of Judges. The amendment lays down that seven Judges will constitute the Supreme Court.

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The Honourable Dr. B. B. Ambedkar: Sir. I move:

" That in Explanation II to clause (3) after the words ' judicial office ' the words ' not inferior to that of a district judge ' be inserted."

I also move : .

" That in clause (4) of article 103, for the words ' supported by not less than two-thirds of the members present and voting has been presented to the President by both Houses of Parliament ' the words ' by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting has been presented to the President ' be substituted ".

Mr. President : There is an amendment to this amendment by Dr. Bakshi Tek Chand, of which he has given notice. It is No. 101 in the printed pamphlet containing the amendments to amendments.

The amendment was not moved.

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Mr. President: Amendment No. 1857 is a verbal amendment. Amendment No. 1858 stands in the name of Professor **K.** T. Shah. Is not that covered by the words ' incapacity and misbehaviour ' ?

Prof. K. T. Shah : I would accept it if you think that they are covered.

I do not move it.

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Mr. President : ...Amendment No. 1862 stands in the name of Dr. B. R. Ambedkar. That is also a formal amendment to substitute for the words " a declaration " the words " an affirmation or oath ". We have made similar changes wherever that expression occurs in other parts of the draft Constitution. I take it that it is moved.

The Honourable Dr. B. R. Ambedkar: Sir, I formally move:

"That in clause (6) of article 103, for the words ' a declaration ' the words ' an affirmation or oath ' be substituted. "

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Mr. President : ...Dr. Ambedkar, would you like to say anything about the amendments.

The Honourable Dr. B. R. Ambedkar: Mr. President, Sir, I am prepared to accept two amendments. One of them is No. 1829 moved by Mr. Santhanam, and the other is No. 1845, moved by Mr. Kamath, by which he proposes that even a jurist may be appointed as a Judge of the Supreme Court. But with regard to Mr.Kamath's amendment No. 1845, I should like to make one reservation, and it is this. I am not yet determined in my own mind whether the word " distinguished " is the proper word in the context. It has been suggested to me that the word " eminent" might be more suitable. But as I said, I am not in a position to make up my mind on this subject; and I would, therefore, like to make this reservation in favour of the Drafting Committee, that the Drafting Committee should be at liberty when it revises the Constitution, to say whether it would accept the word " distinguished " or substitute " eminent " or some other suitable word.

Now, Sir, with regard to the numerous amendments that have been moved, to this article, there are really three issues that have been raised. The first is, how are the Judges of the Supreme Court to be appointed ? Now, grouping the different amendments, which are related to this particular matter, I find three different proposals. The first proposal is that the Judges of the Supreme Court should be appointed with the concurrence of the Chief Justice. That is one view. The other view is that the appointments made by the President should be subject to the confirmation of two-thirds vote by Parliament and the third suggestion is that they should be appointed in consultation with the council of Stales.

With regard to this matter, I quite agree that the point raised is of the greatest importance. There can be no difference of opinion in the House that our judiciary must both be independent of the executive and must also be competent in itself. And the question is how these two objects could be secured. There are two different ways in which this matter is governed in other countries. In Great Britain the appointments are made by the Crown, without any kind of limitation whatsoever, which means by the executive of the day. There is the opposite system in the United States where, for instance, offices of the Supreme Court as well as other offices of the State shall be made only with the concurrence of the Senate in the United States. It seems to me, in the circumstances in which we live today, where the sense of responsibility has not grown to the same extent to which we find it in the United States, it would be dangerous to leave the appointments to be made by the President, without any kind of reservation or limitation, that is to say, merely on the advice of the executive of the day. Similarly, it seems to me that to make every appointment, which the executive wishes to make subject to the concurrence of the Legislature, is also not a very suitable provision. Apart from it's being cumbrous, it also involves the possibility of the appointment being influenced by political pressure and political considerations. The draft article, therefore, steers a middle course. It does not make the President the supreme and the absolute authority in the matter of making appointments. It does not also import the influence of the Legislature. The provision in the article is that there should be consultation of persons who are *ex hypothesis,* well qualified to give proper advice in matters of this sort, and my judgement is that this sort of provision may be regarded as sufficient for the moment.

With regard to the question of the concurrence of the Chief Justice, it seems to me that those who advocate that proposition seem to rely implicitly both on the impartiality of the Chief Justice and the soundness of his judgement. I personally feel no doubt that the Chief Justice is a very eminent person. But after all, the Chief Justice is a man with all the failings, all the sentiments and all the prejudices which we as common people have; and I think, to allow the Chief

Justice practically a veto upon the appointment of judges is really to transfer the authority to the Chief Justice which we are not prepared to vest in the President or the Government of the day. I therefore, think that that is also a dangerous proposition.

The second issue that has been raised by the different amendments moved to this article relates to the question of age. Various views have been expressed as to the age. There are some who think that the judges ought to retire at the age of sixty. Well, so far as High Courts are concerned, that is the present position. There are some who say that the constitution should not fix any age-limit whatsoever, but that the age-limit should be left to be fixed by Parliament by law. It seems to me that that is not a proposition which can be accepted, because if the matter of age was left to Parliament to determine from time to time, no person could be found to accept a place on the Bench, because an incumbent before he accepts a place on the bench would like to know for how many years in the natural course of things, he could hold that office; and therefore, a provision with regard to age, I am quite satisfied, cannot be determined by Parliament from lime to time, but must be fixed in the Constitution itself. The other view is that if you fix any age-limit what you are practically doing is to drive away a man who notwithstanding the age that we have prescribed, *viz.,* sixty-five, is hale and hearty, sound in mind and sound in body and capable for a certain number of years of rendering perfectly good service *to* the Slate. I entirely agree that sixty-five cannot always be regarded as the zero hour in a man's intellectual ability. At the same time, I think Honourable Members who have moved amendments to this effect have forgotten the provision we have made in article 107, where we have provided that it should be open to the Chief Justice to call a retired Judge to sit and decide a particular case or cases. Consequently by the operation of article 107 there is less possibility, if I may put it, of our losing the talent of individual people who have already served on the Supreme Court. I therefore submit that the arguments or the fears that were expressed in the course of' the debate with regard to the question of age have no foundation.

Now, I come to the third point raised in the course of the debate on this amendment and that is the question of the acceptance of office by members of the judiciary after retirement. There are two amendments on the point,—one of Prof. Shah and the other by Shri Jaspat Roy Kapoor. I personally think that none of these amendments could be accepted. These amendments have been moved more or less on the basis of the provisions that have been made in the Draft Constitution relating to the Public Service Commission. It is quite true that the provision has been made that no member of the Public Services Commission shall be entitled to hold an office under the crown for a certain period after he has retired from the Public Services Commission. But it seems to me that there is a

fundamental difference between the members of the judiciary and the members of the Federal Public Services Commission. The difference is this. The Public Services Commission is serving the Government and deciding matters in which Government is directly interested, *viz..,* the recruitment of persons to the civil service. It is quite possible that the minister in charge of a certain portfolio may influence a member of the Public Services Commission by promising something else after retirement if he were to recommend a certain candidate in whom the Minister was interested. Between the Federal Public Services Commission and the Executive the relation is a very close and integral one. In other words, if I may say so, the Public Services Commission is at all times engaged in deciding upon matters in which the Executive is vitally interested. The judiciary decides cases in which the Government has, if at all, the remotest interest, in fact no interest at all. The judiciary is engaged in deciding the issue between citizens and very rarely between citizens and the Government. Consequently the chances of influencing the conduct of a member of the judiciary by the Government are very remote, and my personal view, therefore, is that the provisions which are applied to the Federal Public Services Commission have no place so far as the judiciary is concerned. Besides, there are very many cases where the employment of judicial talent in a specialised form is very necessary for certain purposes. Take the case of our Friend Shri Varadachariar. He has now been appointed member of a Commission investigating income-tax questions.

Shri Jaspat Roy Kapoor: Let it be in an honorary capacity.

The Honourable Dr. B. R. Ambedkar : No, he is paid. It is an office of profit under the crown.

Therefore, who else can be appointed to positions like this, except persons who had judicial talent ? It would be a very great handicap if these very persons who possess talent for doing work of this sort were deprived by provisions such as Shri Jaspat Roy Kapoor suggests. And I have said that the relation between the executive and judiciary are so separate and distinct that the executive has hardly any chance of influencing the judgement of the judiciary. I therefore suggest that the provision suggested is not necessary and I oppose all the amendments.

Following two amendments were accepted.

(1) Amendment by Mr. Santhanam :—

" That in clause (2) of article 103, for the words ' may he ' the words ' the President may deem ' he substituted.

(2) Amendment by Mr.kamath :—

"That in clause (3) of article 103, the following new sub-clause be added:—

(c) or is an eminent jurist ' ".

All four amendments of Dr. Ambedkar as shown before were adopted. In all IS amendments moved by other members were rejected.

[Article 103, as amended, wax added to the Constitution.]

ARTICLE 103-A.

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The Honourable Dr. B. R. Ambedkar : I should like to dispose of this matter in as few words as possible. Before I do so, I should like to state what I understand to be the idea underlying this particular amendment. For the purpose of understanding the main idea underlying this amendment, I think we have to take up three different cases. One case is the case of a Judge of the Supreme Court who has been appointed to an executive office with no right of reversion to the Supreme Court. That is one case. The second case is the appointment of a Supreme Court Judge after he has held that post to an executive office of a non-judicial character. The third case is the case of a Supreme Court Judge being given or assigned duties of a non-judicial character with the right to revert to the Supreme Court. I understand that—my friend Dr. Sen may correct me if I am wrong—this amendment refers to the third proposition, *viz,* the assignment of a Supreme Court Judge to no judicial duties for a short period with the right for him to revert to the Supreme Court.

With regard to the first case that I mentioned, *viz..,* the appointment of a Supreme Court Judge to an executive office provided the Supreme Court Judge resigns his post as a Judge of the Supreme Court, I do not see any objection at all, because he goes out of the Supreme Court altogether.

With regard to the second case, viz., the assignment of duties to a Supreme Court Judge who has retired, we have just now disposed of it. There ought to be no limitation at all.

With regard to the third case, I think it is a point, which requires consideration. We have had two cases in this country. One was the case, which occurred during the war when a Judge of the Federal Court was sent round by the then Government of India on diplomatic missions. We have also had during the regime of this Government the case where the Chief Justice or a Judge—1 forget now—on one of the High Courts, was sent out on a diplomatic mission. On both occasions there was some very strong criticism of such action. My Friend, Mr. Chimanlal Setalvad, came out with an article in the *Times of India,* criticising the action of the Government. Personally I share those sentiments. I am, however, at present not in a position to accept the amendment as worded by Dr. P. K. Sen because the wording either goes too wide or in some causes too narrow. I am prepared to recommend to the Drafting Committee that this point should be taken into consideration. On that assurance, I would request him to withdraw his amendment.

Shri Jaspat Roy Kapoor: May I request that a decision on this clause may be held over till tomorrow because many of us would like to study it carefully.

Mr. President : Dr. Ambedkar has told us that he is willing to refer it to the drafting Committee for its consideration.

Shri Jaspat Roy Kapoor: It might stand over

Mr. President : When it is referred to the Drafting Committee, it means that it stands over, because when it comes back again, it will come back in the form in which it is approved by the Drafting Committee.

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ARTICLE 104

The Honourable Dr. B. R. Ambedkar (Bombay : General) : Sir, I would request that article l()4 be postponed.

ARTICLE 106

The Honourable Dr. B. R. Ambedkar : I accept the two amendments—No. 124 of List No. VI and amendment No. 1883.

Mr. President : There have been two amendments moved. Both have been accepted by Dr. Ambedkar. I will now put them to the vote.

" That with reference to amendment No. 1883 of the List of amendments, in clause (1) of article 106, after the words ' Chief Justice may 'the words ' with the previous consent of the President and ' be inserted."

" That in clause (1) of article 106, after the words ' High Court ' where they occur for the second time, the words ' duly qualified for appointment as a judge of the Supreme Court ' be inserted. "

Foiling amendments were adopted.

[Both the above amendments were accepted. Article 106, as amended, was added to the constitution.]

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ARTICLE 107

Mr. President : Amendment No. 1884. This is a negative amendment. So I rule it out.

Amendment No. 1885. That question has been decided. So this need not be moved.

Shri Jaspat Roy Kapoor : I am not moving amendment No. 1886 as there is another amendment on the same lines.

Mr. President: Amendment No. 1887 is more or less a verbal amendment. So it need not be moved.

The Honourable Dr. B. R. Ambedkar: Sir, I beg to move:

" That in article 107 the words ' subject to the provisions of this article ' be deleted."

Those words are quite unnecessary.

Shri T. T. Krishnamachari : I move:

" That in article 107, in line 3, after the words ' at any time ', the words ' with the previous consent of the President ' be inserted. "

(Amendment Nos. 1889 and 1890 were not moved.)

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Mr. President : We have now the amendments and the article for discussion.

The Honourable Dr. B. R. Ambedkar: I accept amendment 125 moved by Shri T. T. Krishnamachari.

The amendment was adopted.

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ARTICLE 108

The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, I move :

"That for amendment No. 1891 of the List of Amendments, the following be substituted:—

"That for article 108, the following articles be substituted:

108. The Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.

108-A. The Supreme Court shall sit in Delhi or at such other place or places, as the Chief Justice of India may, with the approval of the President, from time to time, appoint. "

Sir, after the general debate, I will say why the amendment that I am moving is necessary.

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The Honourable Dr. B. R. Ambedkar : Mr. President, the amendment which I have moved covers practically all the points which have been raised both by Mr. Kamath as well as by Mr. Jaspat Roy Kapoor.

Sir, the new article 108 is necessary because we have not made any provision in the Draft Constitution to define the status of the Supreme Court. If the House will turn to article, 192, they will find exactly a similar article with regard to the High Courts in India. It seems therefore necessary that a similar provision should be made in the Constitution in order to define the position of the Supreme Court. I do not wish to take much time of the House in saying what the words ' a court of record ' mean. I may briefly say that a court of record is a court the records of which are admitted to be of evidentiary value arid they are not to be questioned when they are produced before any court. That is the meaning of the words ' court of record '. Then, the second part of article 108 says that the court shall

have the power to punish for contempt of itself. As a matter of fact, once you make a court a court of record by statute, the power to punish for contempt necessarily follows from that position. But, it was felt that in view of the fact that in England this power is largely derived from Common Law and as we have no such thing as Common Law in this Country, we felt it better to state the whole position in the statute itself. That is why article 108 has been introduced.

With regard to article 108-A, Mr. Kamath raised a point as to why the word Delhi should occur. The answer is very simple. A court must have a defined place where it shall sit and the litigants must know where to go and whom to approach. Consequently, it is necessary to state in the statute itself as to where the court should sit and that is why the word Delhi is necessary and is introduced for that purpose. The other words which occur in article 108-A are introduced because it is not yet defined whether the capital of India shall continue to be Delhi. If you do not have the words which follow, " or at such other place or places, as the Chief Justice of India may, with the approval of the President, from time to time, appoint " then, what will happen is this. Supposing the capital of India was changed, we would have to amend the Constitution in order to allow the Supreme Court to sit at such other place, which Parliament may decide as the capital. Therefore, I think the subsequent ward is necessary. With regard to the point raised by my honourable Friend Mr. Kapoor. I think the answer given by my friend Mr. Krishnamachari is adequate and I do not propose to say any more.

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Shri Jaspat Roy Kapoor: May I seek a small clarification from Dr. Ambedkar ? Will it be open to the Supreme Court so long as it is sitting in Delhi, to have a circuit court anywhere else in this country simultaneously ?

The Honourable Dr. B. R. Ambedkar: Yes, certainly. A circuit court is only a Bench.

[Amendments of Dr. Ambedkar were accepted. Rest rejected. Article 108 and 108-A as amended, were added to the Constitution.]

The Honourable Dr. B. R. Ambedkar : Sir, I want articles 109 to 114 be held over. The reason why I want these articles to be held over is because these articles while they state general rules, also make certain reservations with regard to the States in Part III of Schedule 1. It is understood that the matter as to the position of the States in Part III is being reconsidered, so that the States in Part III will be brought on the same level and footing as the States in Part 1. If that happens, then, there will be no necessity to introduce these reservations in these articles 109—114. I suggest these may be held over. Mr. President: We will pass them over for the present.

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Mr. President: Amendment No. 1939, in the name of Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"' That in article 115, the words and brackets ' (which relates to the enforcement of fundamental rights) ' be deleted. "

The words are superfluous.

Mr. President : No. 1940 is the same as the one just now moved and so need not be moved. No. 1941 standing in the name of Mr. Nasiruddin Ahmad is also of a drafting nature and need not be moved No. 1942 is not moved.

I think these are the amendments that we have now.

Does any Member wish to say anything ?

We shall now put the amendments.

I will first take Dr. Ambedkar's amendment No. 1939 (mentioned above).

The amendment was adopted.

[Dr. Bakshi Tek Chand's amendment to amendment No. 1938, as given below was also adopted.]

" That in article 115, for the words ' or orders in the nature of the writs ' the words ' orders or writs, including writs in the nature ' be substituted. "

[Article 115, as amended, was added to the Constitution.]

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ARTICLE 117

The Honourable Dr. B. R. Ambedkar: Sir, there is one point which I should like to mention. It is not certainly the intention of the proposed article that the Supreme Court should be bound by its own decision like the House of Lords. The Supreme Court would be free to change its decision and take a different view from the one, which it had taken before. So far as the language is concerned I am quite satisfied that the intention is carried out.

Shri H. V. Kamath : Then why not say " all other courts " ?

The Honourable Dr. B. R. Ambedkar : " All courts " means " all other courts. **"**

[Article 117 was adopted without amendment and added to the Constitution.]

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ARTICLE 119

Mr. President: Amendment No. 1951 is ruled out.

Shri H. V. Kamath: Sir, the point, which I wish to raise in my amendment No. 1952, is a simple one. The article contemplates that the Supreme Court should report to the President its opinion or in its discretion it may withhold its opinion. I believe what is meant is that when once the President refers the matter to the Supreme Court for its opinion there is no option for the Supreme Court. If that is

not meant then the language is right. But if it is meant that once the President refers the matter to the Supreme Court it must report its opinion thereon to the President, then the word " shall " must come in. I wanted a clarification on that point.

The Honourable Dr. B. R. Ambedkar : The Supreme court is not bound.

Shri H. V. Kamath: Then I do not move my amendment.

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The Honourable Dr. B. R. Ambedkar : May I request you. Sir, to hold over this article 119, because it has also reference to article 109 to 114 which we have decided to hold over. **Shri H. V. Kamath :** Then, Sir, I shall reserve my right to move the amendment later on.

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ARTICLE 121

The Honourable Dr. B. R. Ambedkar : I would request Sir, that this article be allowed to stand over.

ARTICLE 122

The Honourable Dr. B. R. Ambedkar : Sir, I move:

" That for the existing article 122, the following be substituted :—

' 122. *Officers and servants and the expenses of the Supreme Court.*—(1) Appointments of officers and servants of the Supreme Court shall be made by the chief Justice of India or such other judge or officer of court as he may direct:

Provided that the President may by rule require that in such cases may be specified in the rule, no person not already attached to the court shall be appointed to any office connected with the court, save after consultation with the Union Public Service Commission.

(2) Subject to the provisions of any law made by Parliament, the conditions of service of officers and servants of the Supreme court shall be such as may be prescribed by rules made by the Chief Justice of India or by some other judge or officer of the court authorised by the Chief Justice of India to make rules for the purpose:

Provided that the salaries, allowances and pensions payable to or in respect of such officers and servants shall be fixed by the chief Justice of India in consultation with the President.

(3) The administrative expenses of the Supreme Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the court, shall be charged upon the revenues of India, and any fees or other moneys taken by the court shall form part of those revenues.'

The object of this redraft is to make a better provision for the independence of the Supreme Court and also to make provision that the administrative expenses of the Supreme Court shall be a charge on the revenues of India.

Sir, there is an amendment to this amendment, which I should like to move at this stage :

" That in amendment No. 1967, for the proviso to clause (2) of the proposed article 122, the following proviso be substituted :—

' Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the President.' "

Mr. President: There is an amendment of Mr. Kapoor to this amendment.

Shri Jaspat Roy Kapoor : It is now covered by the new amendment moved by Dr. Ambedkar. So I consider it unnecessary to move it.

(Amendment Nos. 1968 and 1969 were not moved.)

Mr. President : So there is only the amendment of Dr. Ambedkar. I shall first take the amendment he has moved to his own amendment.

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The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, I would just like to make a few observations in order to clear the position. Sir, there is no doubt that the House in general, has agreed that the independence of the Judiciary from the Executive should be made as clear and definite as we could make it by law. At the same time, there is the fear that in the name of the independence of the Judiciary, we might be creating, what my Friend Mr. T. T. Krishnamachari very aptly called an " *Emporium in Imperio ".* We do not want to create an *Emporium in Imperio,* and at the same time we want to give the Judiciary ample independence so that it can act without fear or favour of the Executive. My friends, if they will carefully examine the provisions of the new amendment which I have proposed in place of the original article 122, will find that the new article proposes to steer a middle course. It refuses to create an *Emporium. in Imperio,* and I think it gives the Judiciary as much independence as is necessary for the purpose of administering justice without fear or favour. I need not therefore, dilate on all the provisions contained in this new article 122, because I find that even among the speakers who have taken part in the debate on this article, there is general agreement that certain clauses of the new article 122 are unexceptionable, that is to say, clause (1), clause (3) and even clause (2). The only point of difference seems to be on proviso to clause (2). In the original proviso, the provision was that with regard to salaries, allowances and so on and so on, the Chief Justice shall fix the same, in consultation with the President. The amended proviso provides that the Chief Justice shall do it with the approval of the President, and

the question really is whether the original provision that this should be done in consultation with the President or whether it might be done with the approval of the President, which of these two alternatives we have to choose. No doubt, the original draft, " Consultation with the President," left or appeared to leave the final decision in the hands of the Chief Justice, while the new proviso with the words " approval of the President " seemed to leave, and in fact does, and is intended to leave the final decision in the hands of the President. Now Sir, in deciding this matter, two considerations may be taken into account. One is, what is the present provision regarding the Federal Court ? If honourable Members will refer to Section 216, sub-clause (2) of the unadapted Government of India Act, 1935, they will find that the provisions contained therein leave the matter to the approval—1 am sorry it is section 242 sub-clause (4)—leaves the matter to the approval of the Governor-General. From that point of view, we are really continuing the position as it exists now. But it seems to me that there is another consideration which goes to support the proposition that we should retain the phrase " with the approval of the President " and it is this. It is undoubtedly a desirable thing that salaries, allowances and pensions payable to servants of the State should be uniform, and there ought not to be material variations in these matters with regard to the civil service. It is likely to create a great deal of heart-burning and might impose upon the treasury an unnecessary burden. Now, if you leave the matter to the Chief Justice to decide, it is quite conceivable—1 do not say that it will happen—but it is quite conceivable that the chief Justice might fix scales of allowances, pensions and salaries very different from those fixed for civil servants who are working in other departments, besides the Judiciary, and I do not think that such a state of things is a desirable thing, and consequently in my judgement, the new draft, the new amendment which I have tabled contains the proper solution of this matter, and I hope the House will be able to accept that in place of the original proviso.

There is one other matter which I might mention, although it has not been provided for in my amendment, nor has it been referred to by Members who have taken part in this debate. No doubt, by clause (3) of my new article 122 we have made provision that the administration charges of the Supreme Court shall be a charge on the revenues of India, but the question is whether this provision contained in clause (3) is enough for the purpose of securing the independence of the judiciary. Now, speaking for myself, I do not think that this clause by itself would be sufficient to secure the independence of the Judiciary. After all, what does it mean when we say that a particular charge shall be a charge on the consolidated funds of the State ? All that it means is this, that it need not be put to the vote of the House. Beyond that it has no meaning. We have ourselves said that when any particular charge is declared to be a charge on the revenues of

India, all that will happen is that it will become a sort of non-votable thing although it will be open to discussion by the Legislature. Therefore, reading clause (3) of article 122, in the light of the provisions that we have made, all that it means is this, that part of the budget relating to the Judiciary will not be required to be voted by the Legislature annually. But I think there is a question which goes to the root of the matter and must take precedence and that is who is to determine what are the requirements of the Supreme Court. We have made no such provision at all. We have left it to the executive to determine how much money may be allotted year after year to the judiciary. It seems to me that that is a very vulnerable position and requires to be rectified. At this stage I only wish to draw the attention of the House to the provisions contained in section 216 of the Government *of* India Act, 1935, which says that the Governor-General shall exercise his individual judgement as to the amount to be included in respect of the administrative expenses of the Federal Court in any estimates of expenditure laid by him before the Chambers of the Federal legislature. So that if the executive differed from the chief Justice as to the amount of money that was necessary for running properly the Federal Court, the Governor-General may intervene and decide how much money should be allotted. That provision now of course is incompatible with the pattern of the Constitution we are adopting and we must therefore, in my judgement, find some other method of securing for the chief Justice and adequacy of funds to carry on his administration. I do not wish for the moment to delay the article on that account. I only mention it to the House, so that if it considers desirable some suitable amendment may be brought in at a later stage to cover the point.

[Dr. Ambedkar's both the amendments were accepted Article. 122, as amended, was added to the Constitution.]

ARTICLE 124

The Honourable Dr. B. R. Ambedkar (Bombay : General) : Mr. President, I cannot say that I am very happy about the position which the Draft Constitution, including the amendments which have been moved to the articles. Speaking for myself, I am of opinion that this dignitary or officer is probably the most important officer in the Constitution of India. He is the one man who is going to see that the expenses voted by Parliament are not exceeded or varied from what has been laid down by parliament in what is called the Appropriation Act. If this functionary is to carry out the duties—and his duties, I submit, are far more important than the duties even of the Judiciary—he should have been certainly as independent as the Judiciary. But, comparing the articles about the Supreme Court and the articles relating to the Auditor-General, I cannot help saying that we have not given him the same independence which we have given to the Judiciary,

although I personally feel that he ought to have far greater independence than the Judiciary itself.

One difference, if I may point out, between the position which we have assigned to the Judiciary and which we propose to assign to the Auditor-General is this. It is only during the course *of* the last week that I moved an amendment to the original article 122 vesting in the Supreme Court the power of appointment of officers and servants of the Supreme court. I see both from the original draft as well as from the amendments that are moved that the Auditor-General is not to have any such power. The absence of such a power means that the staff of the Auditor-General shall be appointed by the Executive. Being appointed by the Executive, the Staff shall be subject to the Executive for disciplinary action. I have not the slightest doubt in my mind that if an officer does not posses the power of disciplinary control over his immediate subordinates, his administration is going to be thoroughly demoralised. From that point of view, I should have thought that it would have been proper in the interests of the people that such a power should have been given to the Auditor-General, But. sentiment seems to be opposed to investing the Auditor-General with such a power. For the moment, I feel that nothing more can be done than to remain content with the sentiment such as it is today. This is my general view.

Coming to the amendments, I accept the amendments moved by Mr. T. T. Krishnamachari and one amendment moved by Mr. B. Das, No. 1975. These amendments, certainly to a large extent, improve the position of the Auditor-General which has been assigned to him in the draft Constitution or in the various amendments. But, I find that even with the article as amended by these amendments, Mr. Sidhva seems to have a complaint. If I understand him properly, his complaint was that the expenses of the Auditor-General should not he made a charge on the Consolidated Fund, but that they should be treated as ordinary supplies and services which should be voted upon by Parliament. His position was that there is no good reason why Parliament should be deprived of its right to discuss the charges and the administrative expenses of the Auditor-General. I think my honourable Friend Mr. Sidhva has completely misunderstood what is meant by charging certain expenses on the revenues of India. If my honourable friend Mr. Sidhva will turn to article 93, which deals with this matter, he will find that although certain expenses may be charged upon the revenues of India, the mere fact that that has been done, does not deprive Parliament of the right to discuss those charges. The right to discuss is there. The only thing is that the right to vote is not given. It is a non-votable item. The reason why it is made non-votable is a very good reason because just as we do not want the Executive to interfere too much in the necessities as determined by the Auditor-General with regard to his own requirements, we do not want a lot of legislators who might

have been discontented for some reason or other or because they may have some kind of a fad for economy, to interfere with the good and efficient administration of the Auditor-General. That is why this provision has been made. My Friend Mr. Sidhva will also realise that this provision is not in any way extraordinary. It is really on a par with the provision we have made with regard to the Supreme Court. I therefore think that there is no good ground for accepting the criticism that has been made by Mr. Sidhva on this point.

Sir, I move that the article as amended be adopted. I accept the amendments Nos. 25 in List 1, 1975 of Mr. B. Das, 130 of Mr. T. T. Krishnamachari, 131 of Mr. T. T. Krishnamachari and 25-C of List I also by Mr. Krishnamachari.

Mr. **President : I** will now put the amendments to vote.

[Following amendments were adopted.]

I " That with reference to amendment No. 1975 of the. List of Amendments, in Chapter V, of Part V for the word ' Auditor-General ' wherever it occurs, (including the heading) the words ' Comptroller and Auditor-General ' be substituted."

2 " That in clause (1) of article 124 after the word ' President ' the words ' by warrant under his hand and seal ' be inserted."

3 " That with reference to amendment No. 1975 of the List of amendments, after clause (1) of article 124, the following new clause be inserted :—

' (I-a) Every person appointed to he the comptroller and Auditor-General of India shall, before he enters upon his office, make and subscribe before the President or some person appointed in that behalf by him an affirmation or oath according to the form set out for the purpose in the Third Schedule.' "

4 " That for amendment No. 25-A of List-1 (Third Week) of amendments to Amendments, dated the 28th May 1949, the following be substituted:—

" that with reference to amendment No. 1980 of the List of amendments, for clause (4) of article 124, the following clause be substituted :—

' (4) Subject to the provisions of any law made by Parliament, the conditions of service of members of the staff of the Comptroller and Auditor-General shall be such as may be prescribed by rules made by the Comptroller and Auditor-General:

Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the President.' "

5 " That with reference to amendment No. 1981 of the List of amendments, for clause (5) of article 124, the following clause be substituted:—

' (5) The administrative expenses of the office of the Comptroller and Auditor-General, including all salaries, allowances and pensions payable to or in respect of the Comptroller and Auditor-General and members of his staff, shall be charged upon the revenues of India.' "

Article 124, as amended was added to the constitution.

ARTICLE 125

Mr. President : Amendment No. 1986, by Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, I move :

"That for the Explanation to article 125, the following Explanation be-" substituted:—

' *Explanation.*— In this article, the expression ' law made by Parliament ' includes any law, ordinance, order, bye-law, rule or regulation passed or made before the commencement of this Constitution and for the time being in force in the territory of India '. "

The House probably will remember that the functions of the Auditor-General are regulated not by law made by Parliament, but by Ordinance, order, bye-law, rule or regulation, etc., made by the Governor-General, under the powers conferred upon him by the Government of India Act, 1935. Consequently, in order to keep alive the ordinances, orders, bye-laws, rules and regulations made by the Governor-General, it is necessary to amplify the explanation so as to include these orders also.

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The Honourable Dr. B. R. Ambedkar: Sir, with regard to the amendment of my Friend Mr. Kunzru I am prepared to accept it provided he is prepared to drop the words " or any local ".....

Pandit Hirday Nath Kunzru: I have dropped them.

The Honourable Dr. B. R. Ambedkar: Because local audit is a matter which is within the control of the Provincial Governments. But the addition of the words " other authority " I think may be necessary or even useful. As he has himself said, the policy of the Government of India today is to create a great many corporations to manage undertakings which it is not possible to manage departmentally and consequently it is necessary that the Government of India should make some provision for the audit of these corporations. That being so I think it is desirable to vest the Central Government with power to allow the Auditor-General to audit even the accounts of all such authorities. Subject to the modification I have suggested, I am prepared to accept the amendment.

With regard to the point made by my Friend Mr. Sidhva that many of these rules with regard to the duties of the Auditor-General are made by the executive, and, therefore, since by the amendment which I have suggested we are continuing to give these powers the same operation which they had before, we are practically investing the Executive with the authority to prescribe the duties of the Auditor-

General. Obviously, there is an incongruity in this position, in that an officer who is supposed to control the Executive Government with regard to the administration of the finance should have his duties prescribed by rules laid by the Executive. Now the only reply that I can give to my honourable Friend, Mr. Sidhva, is this that these provisions have been taken bodily to a large extent from the provisions contained in section 151 of the present Government of India Act, 1935, which deal with the custody of public money, and section 166 which deals with the rules made by the Governor-General with regard to the duties *of* the Auditor-General.

Under the scheme of that Act the rules were required to be made by the Governor-General in the exercise of what is called his individual judgement, that is to say, he would not be required to take the advice of his Ministry in making these rules. To that extent the rules made by the Governor-General prescribing the duties of the Auditor-General would undoubtedly be independent of the Executive. Today we are not vesting the President with any such power of independent judgement so that if any modification in these rules were to be made by the President he would undoubtedly be acting on the advice of the Ministry of the day, that is to say, the Executive. I admit that to that extent there is a certain amount of anomaly, but I do hope that my honourable friend, Mr. Sidhva, who, I hope. will continue to function as a Member when the new Parliament is constituted, will take on himself the earliest opportunity of urging Parliament to change the position and to convert the rules into laws made by Parliament.

[Following amendment of Pandit Kunzru in addition to that of Dr. Ambedkar mentioned before wax accepted.]

" That in clause (1) of article 130, after the word ' may ' the words ' on behalf of the people of the State ' be inserted. "

(Article 125, as amended, was added to the Constitution.)

PART II